

VIRGINIA CODE COMMISSION

*Wednesday, October 6, 2010 – 10:00 a.m.*

*General Assembly Building, 6th Floor*

*Speaker's Conference Room*

*Richmond, Virginia 23219*

**MEMBERS PRESENT:** John S. Edwards; Bill Janis; Jim LeMunyon; Ryan McDougale, Patricia West, Thomas M. Moncure, Jr.; E.M. Miller, Jr.

**MEMBERS ABSENT:** Jane M. Roush; Robert L. Calhoun

**OTHERS PRESENT:** Brian Kennedy, LexisNexis; Chris Nolen, Chair, Administrative Law Advisory Committee; Lane Kneedler

**STAFF PRESENT:** David Cotter, Elizabeth Palen, Jane Chaffin, Jessica Eades

**Call to Order; Introduction**

Senator Edwards called the meeting to order and welcomed new member Judge Patricia West, Virginia Beach Circuit Court.

**Minutes**

Mr. Moncure made a motion, seconded by Mr. Ferguson, to approve the minutes of the June 23, 2010, meeting as presented. The motion carried.

**Administrative Law Advisory Committee**

Chris Nolen, Chair of the Administrative Law Advisory Committee, presented the proposed 2010-2011 budget for the Administrative Law Advisory Committee (ALAC). ALAC is requesting a \$20,000 allocation from the Virginia Code Commission budget for the conduct of meetings; hiring interns and, if needed, consultants; conferences and training; and publications and supplies. This figure is \$10,000 less than the amount requested previously. Mr. Miller made a motion, seconded by Mr. Ferguson, to approve the proposed budget. The motion carried.

Mr. Nolen submitted the resumé of Elizabeth Andrews for consideration by the Commission to fill the current vacancy on ALAC. Ms. Andrews currently serves as Section Chief of the Environmental Section of the Office of the Attorney General and chairs the office's Administrative Process Act committee. Mr. Moncure made a motion, seconded by Mr. Ferguson, to appoint Elizabeth Andrews to the Administrative Law Advisory Committee. The motion carried.

Mr. Nolen advised the Code Commission members that the Administrative Law Conference will be held at the Omni Hotel in Richmond on November 4. Brochures were distributed to the members and Mr. Miller advised that the registration fee for Code Commission members who attend the conference will be paid from the Code Commission's budget.

Mr. Nolen updated the members on the status of this year's ALAC studies. The work groups have been meeting throughout the summer and the full committee is scheduled to meet on October 19 to adopt recommendations to bring before the Commission at its November meeting.

**Recodification of Title 64.1, Wills and Decedents' Estates**

David Cotter, Attorney, Division of Legislative Services, reported on the recodification of Title 64.1, Wills and Decedents' Estates.

Mr. Cotter addressed the following outstanding issues that arose at the June meeting:

1. The work group reviewed Senator Calhoun's question about whether the provisions § 64.2-121 dealing with the amount of the family allowance should be moved to § 64.2-118. The work group agreed that the provisions could be combined.
2. The Virginia Bar Association's Family Law Coalition was asked to review the paternity judgment language (§§ 64.2-104 and 64.2-105 ) to ensure that proper terminology is employed. The coalition does not have an issue with the proposed language.

The Code Commission reviewed and discussed the majority of proposed Chapter 3 (Wills) of Title 64.2, which consists of Articles 1 through 6 of Chapter 3 of Title 64.1. The Commission addressed the following issues:

1. § 64.2-134 - The Commission discussed the definition of "will" and whether striking the savings clause language that reads, "Except when it would be inconsistent with the manifest intent of the legislature," is a substantive change. After a brief discussion, the Commission concluded that the phrase is not needed as it has nothing to do with the contents of a will and the words of the statute will control.  
Delegate Janis made a motion, seconded by Mr. Moncure, to strike the phrase "Unless the context requires otherwise," as unnecessary. Mr. Ferguson stated that he is reluctant to remove the language because the word "will" has other meanings. The motion carried.
2. § 64.2-136 - Mr. Cotter stated that § 64.2-136 is not confined to only wills, but also pertains to powers of attorney and trusts. The work group is considering adding a general provisions chapter to Title 64.2 for provisions with more general applicability. If a general provisions chapter is created, this section, which deals with documents that may be incorporated by reference into a will, power of attorney, or trust instrument, will be moved to that chapter.
3. § 64.2-138 - line 89 - Senator Edwards made a motion, seconded by Mr. Ferguson, to change "Any person, firm, or corporation" to "Any person" because "person" is defined in Title 1 and covers a firm or corporation. The motion carried.
4. § 64.2-144 - The Commission discussed the meaning of the word "seaman" and whether it is intended to apply to individuals at sea other than those serving in the military.  
In the drafting note (line 179), staff noted that the year "1992" should read "1922."
5. § 64.2-145 - The Commission discussed whether there should be a distinction in the use of "attorney" on lines 184 and 193. Delegate Janis made a motion, seconded by Mr. Ferguson, to reinstate the language "Any attorney-at-law" on line 193. The motion carried.
6. § 64.2-146 - Mr. Cotter advised that the work group is still debating the language relating to a fiduciary's discretion.
7. §§ 64.2-147 and 64.2-148 - The Commission debated whether it is necessary to add the definition of "personal representative" in Title 64.2 when the term as defined in § 1-234 and

applies throughout the entire Code of Virginia. The Commission's general policy is that any word or term defined in Title 1 should not be defined in another part of the code unless it is intended to have a different meaning. However, some members believe that there is value in adding the definition in the substantive title. Mr. Cotter will ask the work group to revisit the issue taking into consideration the Commission members' comments.

8. § 64.2-150 - Delegate Janis made a motion, seconded by Senator McDougale, to change the phrase "If a testator who intends to revoke a will..." to "If a testator with intent to revoke a will..." on line 528. The motion carried.

9. Mr. Ferguson made a motion, seconded by Delegate Janis, to direct the work group to create a global definitions section for Title 64.2. The motion carried. Mr. Miller suggested that definitions in the uniform acts should have their own definitions sections and not be encompassed in the general definitions section.

10. § 64.2-156 - A member questioned whether "legacies" should be changed to "bequests" as proposed on line 600. Mr. Cotter will ask the work group to revisit this change.

11. § 64.2-163 - The Commission discussed the proposal to remove the reference to the Premarital Agreement Act on lines 748 and 749. The work group eliminated the language to allow valid premarital or marital agreements executed outside the Commonwealth to be given effect. The Commission asked staff to take the issue back to the work group for its reconsideration.

12. § 64.2-186 - Senator McDougale made a motion, seconded by Delegate Janis, to reinstate the word "forthwith" on line 1214. The motion carried.

13. § 64.2-187 - The Commission discussed the rewritten text on lines 1235 and 1236, specifically the use of "summoned" and "summons" versus the use of terms like "service," "serve," or "notice." A summons requires a person to appear before a court. The issue is with regard to probate proceedings whether all interested persons should be required to appear, i.e., summoned, or whether such persons only need to be given notice of the probate proceeding.

#### **2011 Code of Virginia Pricing and Replacement Volumes Proposal**

Brian Kennedy, Associate Director for Government Content Acquisition, LexisNexis, presented the Code of Virginia proposed replacement volume options and pricing proposal. He stated that the pricing proposal was derived from an analysis of LexisNexis costs and the Producer Price Index for Book Publishing and reflects approximately a 5% increase from 2010. The proposed pricing table sets out three pricing options based on the replacement of four, five, and six volumes, respectively.

In addition to suggesting Volumes 1, 3, and 6 as replacement volume candidates, Mr. Kennedy suggested the Commission consider splitting Volumes 5 and 5A by reconfiguring the two volumes into three volumes numbered 5, 5A, and 5B.

Upon Mr. Miller's suggestion, the Chairman deferred discussion of the proposal until the next meeting to give staff a chance to review the proposal and make recommendations to the Commission.

117 **Other Business**

118 **Technical Drafting Issues: Barrier Crimes Provisions in Titles 37.2 and 63.2**

119 Jess Eades, Senior Attorney, Division of Legislative Services, explained that the listing of barrier  
120 crimes in Titles 37.2 (Behavioral Health) and 63.2 (Social Services) frequently are not amended  
121 to correspond with crimes that the legislature adds in Title 18.2 of the Code of Virginia. Ms.  
122 Eades suggested that there are better ways to draft the barrier crimes statutes to clearly denote  
123 each crime and ensure that no crimes are excluded. The Commission discussed the difficulty of  
124 getting such legislation passed through the General Assembly. It also discussed the feasibility of  
125 asking the Division of Legislative Services to institute a protocol so that when barrier crimes are  
126 amended in Title 18.2, the respective sections in Titles 37.2 and 63.2 are considered. The  
127 Chairman asked Ms. Eades to draft proposed language rewriting the barrier crimes provisions in  
128 Titles 37.2 and 63.2 to present to the Commission at its next meeting.

129 **Budget**

130 Mr. Miller addressed the special funds that are part of the Code Commission's budget. The  
131 special funds total approximately \$125,000 and are derived from fees paid by the noncontract  
132 Code of Virginia publishers for access to the Code of Virginia publishing forum. The forum  
133 provides access to the all information that is available to the contract publisher during the  
134 codification process after each General Assembly session, as well as to any corrections made to  
135 the Code of Virginia during the interim. The funds have been earmarked for development and  
136 maintenance of, and upgrades to, the Code Commission's electronic regulation filing system.  
137 However, to date, Code Commission staff and Division of Legislative Automated Systems staff  
138 have been able to create and enhance the system at minimal cost, therefore, avoiding use of the  
139 special funds. Mr. Miller then explained the problems that the Division of Legislative Services  
140 (DLS) has been facing in maintaining its 20-year-old telephone system. Most recently, the phone  
141 system was repaired with a software upgrade costing approximately \$2,000, which should last  
142 through the 2011 General Assembly session. Mr. Miller asked the Commission to consider  
143 allotting \$30,000 of the special funds to DLS for procurement of a new telephone system to  
144 replace its antiquated system. Mr. Ferguson asked if these funds belong to the Commonwealth,  
145 and stated that he is willing to make a motion subject to any legal or constitutional requirements  
146 being met. After further discussion of the scope of the Commission's authority, Mr. Miller asked  
147 the Chairman to defer the matter until the November meeting so he could research the  
148 Commission's concerns.

149 **Public Comment; Adjourn**

150 The chair opened the floor for public comment. As there was no public comment and no further  
151 business to be discussed, the meeting adjourned at 1:40 p.m.